

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
CIVIL DIVISION

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|-------------------------|---|---|
| OMAR TARAZI |) | Case No. 2:10-CV-00793 |
| |) | |
| Plaintiff, |) | Judge Edmund A. Sargus |
| |) | Magistrate Norah McCann King |
| vs. |) | |
| PAMELA G. OSHRY, ET AL. |) | <u>DEFENDANT, JOHN STEMBERGER'S,</u> |
| |) | <u>ANSWER TO COMPLAINT WITH</u> |
| |) | <u>CROSS-CLAIM AGAINST</u> |
| Defendants. |) | <u>DEFENDANT, PAMELA G. OSHRY;</u> |
| |) | <u>DEMAND FOR JURY TRIAL</u> |

ANSWER

Defendant, John Stemberger, for his Answer to the Complaint hereby states as follows:

1. Admit that this Court has subject matter jurisdiction pursuant to Title 28 U.S.C. Section 1332(a)(1) in that this is a lawsuit between citizens of different states and the Plaintiff seeks damages in excess of \$75,000; but,
2. Deny the remainder of the allegations contained in II. Subject Matter Jurisdiction and Venue contained in the Complaint of the Plaintiff.
2. Deny for lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of III. Statement of the Claim contained in the Complaint of the Plaintiff.
3. Admit the allegations contained in paragraph 2 of III. Statement of the Claim contained in the Complaint of the Plaintiff.

4. Deny for lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 4, 5, 6, 10, 14, of III. Statement of the Claim contained in the Complaint of the Plaintiff.

5. Deny the allegations contained in paragraphs 3, 7, 8, 9, 11, 16, 17, 18 and 19 of III. Statement of the Claim contained in the Complaint of the Plaintiff.

6. The allegations contained in paragraphs 12, 13 and 15 of III. Statement of the Claim contained in the Complaint of the Plaintiff are not directed to this answering Defendant who has no obligation to respond to the same.

7. Deny for lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained in IV. Previous Lawsuits contained in the Complaint of the Plaintiff.

8. Each and every allegation not specifically admitted to be true hereinabove is hereby DENIED.

SECOND DEFENSE

Defendant Stemberger states that the Plaintiff has failed to state a claim upon which relief can be granted pursuant to Federal Rules of Civil Procedure, Rule 12(b)(6), and that he is, therefore, barred from recovery.

THIRD DEFENSE

Defendant Stemberger states that this Court does not have personal jurisdiction over this Defendant and, pursuant to Federal Rules of Civil Procedure, Rule 12(b)(2), moves that the Complaint of the Plaintiff be dismissed.

FOURTH DEFENSE

Defendant Stemberger states that venue does not lie in this Court and, pursuant to Federal Rules of Civil Procedure, Rule 12(b)(3), moves that the Complaint of the Plaintiff be dismissed.

FIFTH DEFENSE

Defendant Stemberger states that this Court does not have personal jurisdiction over this Defendant and, pursuant to Federal Rules of Civil Procedure, Rule 12(b)(2), moves that the Complaint of the Plaintiff be dismissed.

SIXTH DEFENSE

Defendant Stemberger says Plaintiff has failed to properly name and serve the Defendant and, therefore, is subject to the defenses of insufficiency of process and insufficiency of service of process, pursuant to Federal Rules of Civil Procedure, Rules 12(b)(4) and 12(b)(5), and is, therefore, barred from recovery.

FIRST AFFIRMATIVE DEFENSE

Plaintiff's claims are barred because Plaintiff failed to commence the action within one year after the alleged defamatory remarks and his claim is barred by the statute of limitations.

SECOND AFFIRMATIVE DEFENSE

Plaintiff has failed to join all parties needed for just adjudication of his claims.

THIRD AFFIRMATIVE DEFENSE

Defendant asserts that any statements made by the Defendant concerning the Plaintiff were made in good faith and upon information and belief that the statements made were true. Defendant further asserts that truth is a defense to all allegations of Plaintiff concerning alleged statements by this Defendant.

FOURTH AFFIRMATIVE DEFENSE

The statements alleged by the Plaintiff were made during the course of legal proceedings and are subject to an actual privilege.

FIFTH AFFIRMATIVE DEFENSE

The statements alleged by the Plaintiff were made during the course of legal proceedings and are subject to a qualified privilege.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff was a public figure at the time the alleged statements were made and cannot pursue a cause of action against this Defendant without a showing of actual malice.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff has failed to set forth any allegations of special damages.

EIGHTH AFFIRMATIVE DEFENSE

None of the allegations set forth by the Plaintiff substantiate a claim for libel, slander or defamation per se.

NINTH AFFIRMATIVE DEFENSE

The allegations of the Plaintiff against this answering defendant are constitutionally protected statements of opinion.

TENTH AFFIRMATIVE DEFENSE

The allegations of the Plaintiff against this answering defendant are constitutionally protected statements of free speech.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff has failed to mitigate his damages as required by a law and Plaintiff is, therefore, barred from recovery.

TWELVTH AFFIRMATIVE DEFENSE

The allegations of the Plaintiff against this answering defendant are not defamatory per se and Plaintiff has failed to plead any extrinsic evidence which would lead to the allegation that said statements were defamatory per quod.

WHEREFORE, having fully answered, defendant, John Stemberger respectfully requests that the Court dismiss Plaintiff's Complaint at Plaintiff's costs.

**CROSS-CLAIM OF DEFENDANT, JOHN STEMBERGER,
AGAINST DEFENDANT, PAMELA G. OSHRY**

1. Plaintiff, Omar Tarazi, has filed suit against Defendants, John Stemberger and Pamela G. Oshry, for damages he allegedly sustained as a result of statements made in 2009 and 2010.

2. As set forth more fully hereinbefore, Defendant Stemberger, denies defaming the Plaintiff at any time in any manner.

3. The damages of which the Plaintiff complains, if any, were caused by the actions of Defendant, Pamela G. Oshry.

4. If Defendant, John Stemberger, is found liable to Plaintiff, which liability is denied, then said liability is joint and several with the liability of Defendant, Pamela G. Oshry. John Stemberger, is entitled to contribution from Defendant, Pamela G. Oshry, with respect to such damages in accordance with the relative degrees of fault, if any, of the parties.

WHEREFORE, Defendant, John Stemberger, hereby demands judgment for contribution from Defendant, Pamela G. Oshry, for whatever sums Defendant, John Stemberger, is found liable to Plaintiff in excess of this Defendant's proportionate share of liability, plus interest, costs and such other and further relief as the court deems appropriate.

Respectfully submitted,

/s/ Jason C. Hunter 0073317 (10/12/10)

JASON C. HUNTER (0073317)
Attorney for Defendant, John Stemberger
280 North High Street, Suite 810
Columbus, Ohio 43215
Phone: 614/249-9001; Fax: 614/249-8752
E-Mail Address: huntej21s@nationwide.com

JURY DEMAND

A trial by jury is demanded on all issues.

/s/ Jason C. Hunter 0073317 (10/12/10)

JASON C. HUNTER (0073317)
Attorney for Defendant, John Stemberger

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of October, 2010, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. Mail. Parties may access this filing through the Court's system.

Omar Tarazi
5635 Sandbrook Lane
Hilliard OH 43026

Plaintiff Pro Se

Patrick K. Dunphy, Esq.
FALKE & DUNPHY, LLC
30 Wyoming Street
Dayton, Ohio 45409-2731
E-Mail: dunphy@falkedunphy.com

Attorney for Defendant,
Pamela Geller

David Yerushalmi, Esq.
640 Eastern Parkway, Suite 4C
Brooklyn, NY 11213
E-Mail: david.yerushalmi@verizon.net

Attorney for Defendant,
Pamela Geller

Robert J. Muise, Esq.
24 Frank Lloyd Wright Drive
P. O. Box 393
Ann Arbor, MI 48106
E-Mail: rmuisse@thomasmoore.org

Attorney for Defendant,
Pamela Geller

/s/ Jason C. Hunter 0073317 (10/12/10)

JASON C. HUNTER (0073317)
Attorney for Defendant, John Stemberger